Heartland Food Warehouse, Division of Purity Supreme Supermarkets *and* United Food & Commercial Workers Union, Local 371, AFL-CIO. Case 39-CA-9

June 29, 1981

DECISION AND ORDER

On October 9, 1980, Administrative Law Judge James L. Rose issued the attached Decision in this proceeding. Thereafter, both Respondent and the General Counsel filed exceptions and supporting briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge, as modified and further explained herein, and to adopt his recommended Order, as modified herein.[3]

The central issue presented by this proceeding is whether Respondent discharged its employees Kerry Carroll and John Barile because of their participation in protected concerted activities, and thereby in violation of Section 8(a)(1) and (3) of the Act. In adopting the Administrative Law Judge's conclusion that Respondent discriminatorily discharged these employees, we rely upon the following analysis which applies the test enunciated in the Board's recent decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980). The test in cases alleging violation of Section 8(a)(3) of the Act, where a lawful as well as an unlawful motive may exist for the discharge, requires the General Counsel to make a *prima facie* showing that the employees' protected activities were motivating factors in Respondent's decision to discharge them. If the General Counsel is successful, the burden of proof is then shifted to Respondent to show by a preponderance of the evidence that the discharges would have occurred even in the absence of the employees' protected activities.

With respect to the first part of that test, it is clear that the General Counsel has successfully met his burden of establishing a *prima facie* case of unlawful discrimination. The evidence establishes that employees Carroll and Barile were leading union adherents. They also were vocal critics of Respondent's management policies, and this latter fact was all too well known to Respondent. Thus, it was Carroll and Barile who requested a meeting between the store manager and the meat department employees to discuss employee grievances, and, when such a meeting was held on September 15, 1979, Carroll and Barile were the most outspoken protagonists in attendance. This meeting prompted still another meeting on October 4, 1979, between Leo Brown, Respondent's vice president for industrial relations, and the employees of the meat department. At the second meeting, Brown repeatedly emphasized that the employees did not need a "third party" to speak for them, and, although Brown did not at any time mention the word "union," he admitted in his testimony that by third party he meant a union.

The foregoing evidence establishes that Respondent was both aware and concerned about employee discontent; that it recognized the distinct possibility that the employees would attempt to bring a union into the store if they had not, in fact, done so already; and that Respondent, through Brown, openly and specifically opposed such concerted activity, though avoiding the use of the term "union" in so doing. While there is no evidence that Respondent had specific knowledge of the union activities of Carroll or Barile,[4] or for that matter that union activities were actually under way, it clearly recognized the potential for such action, and, in view of the concerted activities of both Carroll and Barile, Respondent could readily assume that they would be in the forefront of any such effort. Accordingly, we find that Respondent's knowledge of Carroll's and Barile's protected activities as leaders in the presentation of employee grievances, and its fear that their activities might culminate in a union drive, were factors in their selection for discharge. We therefore conclude that the General Counsel has met his burden of proof under *Wright Line*.

We turn now to the reasons offered by Respondent to rebut the General Counsel's case, it is apparent that Respondent's focus is on demonstrating that Carroll and Barile were laid off for purely economic reasons. Respondent maintains that economic reasons forced it to reduce by two the number of meatcutters at its Vernon store. According to Respondent, Carroll and Barile were select-

[1] Respondent has requested oral argument. The request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] We shall modify the recommended Order and notice to include the full reinstatement language traditionally used by the Board.

[4] We do not rely on the Administrative Law Judge's application of the small-plant doctrine to show that Respondent had knowledge of the union activities of Carroll and Barile. We also place no reliance on the Administrative Law Judge's finding that Respondent learned of the union activities of Carroll and Barile from a nonsupervisory employee who was "sufficiently identified with" management.

ed for discharge based upon ratings of their performance and productivity, which placed them last among the five Vernon meatcutters, and without consideration of their expression of grievances or their potential for union activity.

We are forced to reject Respondent's explanation for selecting Carroll and Barile for discharge as incompatible with its actions both prior to and following their termination. We note that, while Respondent claims that economic reasons forced it to lay off two meatcutters at its Vernon store, Respondent immediately transferred a less experienced meatcutter from its nearby Newington store to replace one of the meatcutters discharged from Vernon. As the Administrative Law Judge found, Respondent's assertion that it transferred the less experienced meatcutter because of its policy prohibiting family members from working in the same store is plainly makeweight argument, since Respondent had often made exceptions to this policy. We note also that, while Respondent contends that it had economic problems in both its Vernon and Newington stores, it made no attempt to rate the meatcutters in Newington. At all times, Respondent's focus was on its Vernon store, where concern over employee unrest, concerted activity, and potential union support had lead to a series of meetings between employees and management officials, and where Carroll and Barile were outspoken in their voicing of employee grievances.

Although Respondent asserts, and the Administrative Law Judge found, that it had economic justification for reducing the number of meatcutters at its Vernon store, Respondent has not shown that absent Carroll and Barile's participation in protected activities these employees would have been the ones discharged, rather than any of the other Vernon meatcutters or the less experienced meatcutter transferred from Newington. We rely here again on the transfer to Vernon of a less experienced meatcutter. Further undermining Respondent's defense is the fact that Respondent had previously pursued a policy of offering full-time employees transfers to other stores as an alternative to layoff. Respondent did not follow this policy with regard to Carroll and Barile, who were not offered transfers to any of Respondent's other stores. See *Montgomery Ward & Co., Incorporated*, 234 NLRB 13 (1978). The Administrative Law Judge was therefore correct in finding that where, as here, the respondent's stated motives for discharge are discredited, it may be inferred that the true motive for discharge is an unlawful one which respondent seeks to disguise. See *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466 (9th Cir. 1966); *First National Bank of Pueblo*, 240 NLRB 184 (1979). We therefore conclude that Respondent discharged Carroll and Barile because of their protected concerted activities and affirm the Administrative Law Judge's finding that Respondent thus violated Section 8(a)(3) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Heartland Food Warehouse, Division of Purity Supreme Supermarkets, Vernon, Connecticut, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(a):

"(a) Offer John Barile and Kerry Carroll immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered as a result of the discrimination against them in accordance with the provisions in the section of this Decision entitled "The Remedy."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT lay off or otherwise discriminate against our employees because they engage in concerted activity protected by Section 7 of the National Labor Relations Act or engage in any activity on behalf of any labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer John Barile and Kerry Carroll immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to

substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered as a result of the discrimination against them, with interest.

HEARTLAND FOOD WAREHOUSE, DIVISION OF PURITY SUPREME SUPERMARKETS

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was heard before me on May 27 and 28, 1980, at Hartford, Connecticut, upon the General Counsel's complaint which alleged that on November 3, 1979,[1] Respondent terminated two employees in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C §151, *et seq.* It is also alleged that the Respondent engaged in certain activity violative of Section 8(a)(1) of the Act.

The Respondent admitted laying off the two employees on the date alleged but contends that such was prompted by economic concerns and not unlawfully motivated. The Respondent generally denied that it otherwise engaged in any activity violative of the Act.

Upon the record as a whole, including my observation of the witnesses, briefs, and arguments of counsel, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The Respondent is a Massachusetts corporation engaged in the operation of retail grocery stores in several New England States, including facilities at Vernon and Newington, Connecticut. In the course and conduct of its business, the Respondent annually derives gross revenues in excess of $500,000 and annually receives at its Vernon facility goods, products, and materials valued in excess of $50,000 directly from points outside the State of Connecticut. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Food & Commercial Workers Union, Local 371, AFL–CIO (herein the Union), is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Fact as Found*

The Respondent opened its Vernon store (a low-overhead type supermarket) in October 1978. At that time Kerry Carroll and John Barile were hired as meatcutters, neither having been previously employed by the Respondent. However, both were experienced meatcutters. Some of the Vernon staff transferred from the Respondent's Newington store including the store manager, Warren Boyle and the meat department manager, Russell Dussault.

For 2 days after its opening, the Union picketed the store. There was then no activity on behalf of the Union until some employees, particularly Carroll and Barile, began discussing it among themselves in August or September 1979. Following an initial meeting of just employees (Barile, Carroll, and one other), the business agent for the Union was contacted and in late September, Barile and Carroll met with him and signed authorization cards. They testified that they took authorization cards back to the store and attempted to get other employees to sign them, but were unsuccessful even though some of the others had indicated a willingness to do so. Aside from some general discussion concerning the Union or unionization to which Barile and Carroll testified, such was the extent of union activity in this matter.

In mid-September, at the request first of Barile and then Carroll, Boyle agreed to meet with the meat department employees in order to hear and air some grievances they said they had. The meeting was held on September 15.[2] At this meeting, Barile and Carroll voiced a number of objections to the way Boyle was running the meat department including a grievance concerning overtime, a supposed undercutting of Carroll with a customer, and generally that Boyle had ceased being a good guy in a "white hat." There is no question, even from the Respondent's witnesses, that Barile and Carroll were the outspoken protagonists at this meeting.

Both before and after the meeting, Boyle reported this matter to the district manager, Edward (Ned) DeLuca, who in turn asked Leo Brown, the Respondent's vice president of industrial relations, to meet with employees at the Vernon store. Brown arranged to meet with them on October 4.

Brown testified that the meat departments of 14 of the Respondent's 40 stores are unionized, down 1 from when he took charge of industrial relations a number of years ago. He also testified that when the meatcutters (now the Union, after its merger with the retail clerks) begin an organizational campaign, he "runs like a scared rabbit."

[1] All dates are in 1979 unless otherwise indicated.

[2] Both Barile and Carroll placed the time of this meeting in mid-October; however, I am satisfied that the meeting took place on or about September 15. I found Boyle's testimony to be more credible than that of either Barile and Carroll. Further, Boyle's dating of the meeting is consistent with the company payroll records concerning the vacations of Dussault and Boyle. Finally, where credibility resolutions are required in this matter, I am constrained not to credit Barile and Carroll. Generally their demeanor was negative and their recitation of the events seemed more self-serving than accurate. I note also that on the material issues where their testimony differed from other witnesses theirs was not corroborated, whereas the testimony of witnesses called by the Respondent was, in some instances by individuals who appear to have little stake in the outcome of this proceeding. Barile and Carroll, of course, are principals and are the only ones who stand to gain from a favorable resolution of the issues here. Thus, while I do conclude, *infra*, that Barile and Carroll were laid off in violation of the Act, I believe that much of their testimony was an attempt to support such a conclusion and whether intentionally contrived or not, their testimony is not, I believe, reliable.

During the course of his meeting with employees, Brown extolled the Company, its benefits, and told employees among other things that they did not need a "third party" to speak for them—that the Company was one big happy family. Brown credibly testified that at no time during the course of this meeting did he say "union," tell employees that he had heard they were attempting to organize a union and that he wanted it stopped, or make any of the other antiunion statements attributed to him by Barile and Carroll. Brown's testimony is corroborated by all of the other witnesses who testified concerning this event except Barile and Carroll.

Barile and Carroll both testified that Brown opened the meeting by stating that he had heard there was union talk going around among employees, and that he wanted it stopped. I find this testimony of Barile and Carroll is not credible, is self-serving, and I specifically conclude that Brown did not make the statements attributed to him by Barile and Carroll. Further, I find that during the course of his discussion with employees, Brown did not mention the word "union" at all.

This is not to say, however, that Brown was not interested in attempting to stop what he may have conceived as an embryonic union campaign when he agreed to meet with employees. The meeting with employees resulted from the apparently adverse meeting Boyle had with the meat department some 2 weeks previously. Brown testified that when he told employees they did not need a "third party" he meant that they did not need a union. While Brown did not use the word "union," he did not have to. The employees knew full well what he meant.

From its opening, the Vernon store did not do as well as the Respondent had anticipated. Much of its overhead is payroll and the Company closely monitors the payroll against gross sales. The Company's adverse payroll/gross volume situation resulted in a management decision to lay off all of the part-time employees in the meat department of the Vernon store in the spring of 1979. Nevertheless, according to the Respondent's generally credible evidence, the situation did not substantially improve. Thus, DeLuca wrote a memorandum to his superior on August 8 wherein he stated that the Company was "heavy 2 cutters" at the Vernon store and that even if business increased significantly in the Fall they would still be overstaffed. He recommended they wait another month or so to determine whether to lay off anyone.

Then on September 6, DeLuca wrote another memorandum in which he stated that both the Vernon and Newington stores had shown a slight improvement but that the meat departments continued to be areas of concern; and, in any event, both Newington and Vernon would probably be overstaffed by two.

Finally, on October 29, DeLuca wrote a third memorandum to his superior recommending that two meatcutters be laid off in the Vernon store and one be transferred from Newington which would have the net result of reducing the meat department payroll in each store by 40 hours per week.

On November 3, Carroll and Barile were informed by Boyle that they were being laid off, Boyle telling them that there was little prospect for an improvement in the Company's situation and thus the chances of recall were minimal. Barile and Carroll testified that Boyle told them that one of the criteria used by him in determining to lay them off was their "attitude." Boyle denied this, a denial which I credit. Boyle did testify, however, that both Barile and Carroll were good meatcutters but that he had determined to lay them off rather than any of the other three in the department because it was his determination, as well as that of others who rated all of the meatcutters, that Barile and Carroll were respectively fourth and fifth (or vice versa) among the five.

With the layoff of Barile and Carroll, Carlo Nasuti was transferred from the Newington store to Vernon. The Company contends the reason it transferred Nasuti was because he had recently married another employee at the Newington store. Company policy prohibits two members of an immediate family working at the same store. The Company did not adequately explain, however, why it chose to lay off a competent meatcutter—either Carroll or Barile—and keep Nasuti who was still very much in the process of learning. He had been classified as a meatcutter only in August 1979 after having passed a test he had flunked previously.

B. *Analysis and Concluding Findings*

1. The layoffs of Barile and Carroll

An employer may layoff whomever it wishes and whenever. Such is not unlawful under this Act unless motivated by employees' union activity or to discriminate against employees because they engaged in concerted activity protected by Section 7. Nor is it an unfair labor practice for an employer to be irrational or inconsistent in the application of its employment policies. However, where, as here, it is alleged that the employer laid off employees with an unlawful motive, then all of the surrounding circumstances are an appropriate area of inquiry. Irrational and inconsistent acts of the employer give rise to the legitimate inference that the motive is other than that which the employer professes. That is, experience has taught that companies do not in fact conduct their personnel relations in an irrational fashion. In short, the Respondent's self-serving denials need not be accepted at face value. Indeed if all the surrounding circumstances so suggest, they can be discredited from which an inference can be drawn that the true motive for selecting a given individual for layoff was that which the employer sought to disguise, namely, an unlawful one. *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466 (9th Cir. 1966).

Such, I conclude, is the situation here. I conclude that notwithstanding the Respondent's demonstrated economic necessity for laying off one meatcutter at the Vernon store, it determined to lay off two because Barile and Carroll had engaged in protected concerted activity at a minimum, and potentially were involved in an organizational campaign on behalf of the Union.

The Respondent attempted to prove that Barile and Carroll were selected only after it was determined that two employees from the Vernon store would have to be laid off and that the selection process was so fair as to

negate any inference of an unlawful motive. Thus, in the week or so prior to the layoffs, a number of individuals rated the five full-time meatcutters at the Vernon store, rating Barile and Carroll fourth and fifth. However, this asserted fairness is inconsistent with what in fact happened to the layoff of both Barile and Carroll and the transfer to the Vernon store of Carlo Nasuti who was neither as experienced nor as competent a meatcutter as either Barile or Carroll.

While the Respondent's witnesses testified concerning the policy that members of an immediate family are not allowed to work at the same store, the Respondent does allow exceptions. Beyond this, the policy does not explain why the Respondent would retain an employee of lesser competence and experience. It is further noted that the Respondent apparently determined to reduce the payroll at both the Newington and the Vernon stores as per DeLuca's memos, but did not rate any of the employees at the Newington store, either among themselves or together with the Vernon meatcutters. The only conceivable explanation for treating the Vernon employees differently from those at Newington is that the Respondent was attempting to make a record to justify its ultimate selection. In short, a fair inference from the inconsistent manner with which the Respondent treated the Newington and Vernon employees is, and I conclude, that the Respondent had predetermined the layoff, precisely Barile and Carroll, and sought to disguise its motive for doing so.

Both DeLuca and Brown testified that it is the Company's policy not to lay off permanent full-time employees. Indeed, the parties stipulated that in all the Respondent's stores, the only layoffs of full-time meatcutters between January 1, 1978, and November 3, 1979, were Barile and Carroll. Thus, where a reduction-in-force is required at a particular store, the employee selected is given an opportunity to transfer to another store. Neither Barile nor Carroll was given such an opportunity and thus were treated disparately from other employees of the Respondent and in opposition to Respondent's stated policy and practice. This departure was not explained. But a reasonable inference is that the Respondent decided to sever the employment of Barile and Carroll.

In view of the inconsistency with which the Respondent treated Barile and Carroll as against Nasuti as well as employees generally, I conclude that the Respondent's stated motive in selecting them for layoff was not solely economic necessity.

Indeed, I conclude that Barile and Carroll were selected for layoff because they had engaged in protected concerted activity in seeking and speaking at the September meeting with Boyle, and to the extent the Respondent knew of the fledgling union campaign, Barile and Carroll were clearly the ones who figured to be the two activists. It does not require specific knowledge of their union activity on the part of DeLuca and Boyle to conclude that the reason these two were selected was because of their potential for engaging in union activity and because they had in fact engaged in protected concerted activity.

Though knowledge of the union activity is specifically denied by all of the principals of the Respondent, I do note that Dussault, the meat department head, must necessarily have been aware of it. Though he testified he did not confirm or deny such knowledge. Given the nature of the operation and the small number of employees, I conclude that Dussault had specific knowledge of the union activity. Even though it appears from the record that his duties do not make him a supervisor within the meaning of Section 2(11) of the Act, he is sufficiently identified with management of the Respondent's Vernon store so as to conclude that his knowledge became at least the supposition of higher management. This was not denied though precise "knowledge" was.

Further, the timing of the layoffs of Barile and Carroll in connection with the union activity as well as their meeting with Boyle would suggest that these factors played a predominant role in the Respondent's decision.

While I find from the record before me that the Respondent did have economic justification for laying off one meatcutter at the Vernon store, it chose to lay off the two for unlawful reasons. Thus, this is not a case where, absent the union activity, the same result would have attained. Rather, in this matter, but for the concerted activity of Barile and Carroll, one of them at least, if not both, would not have been selected for layoff. And even if I can conclude that one of them would have been selected for layoff, from the state of this record it is unknown which. I conclude that Barile and Carroll principally were laid off in violation of Section 8(a)(1) because they had engaged in concerted activity protected by Section 7 of the Act. In addition, I conclude that they were suspected, at least, of beginning the organizational campaign and that such was a factor in the determination to lay them off. Accordingly, the layoffs were also violative of Section 8(a)(3) of the Act.

2. The alleged 8(a)(1) violations

The General Counsel alleges that during the October 4 meeting which Brown held among employees, he created the impression of surveillance, impliedly threatened employees, informed them that it would be futile for them to select the Union as their bargaining representative, and promulgated a rule prohibiting all union activity. From the generally credible testimony of Brown, corroborated to a substantial extent by other witnesses, I conclude that he made none of the statements attributed to him by Barile and Carroll on which finding such violations could be made. Specifically, I find that Brown did not at any time mention the word "union" to employees. While the purpose of his meeting no doubt was to inform employees that the Company could get along very well without a third party (meaning union) and that his meeting with employees was no doubt troubleshooting in nature, nevertheless such is permissible absent threats or the like.

As noted above, I specifically do not credit the testimony of Barile and Carroll concerning the substance of this meeting, and accordingly I will recommend that paragraph 8 of the complaint be dismissed.

It is further alleged that, in October, DeLuca solicited employee complaints and grievances and promised increased benefits. Both Barile and Carroll testified that DeLuca talked to employees individually following the

meeting with Boyle. They testified he asked if they had any complaints or problems because he had heard there had been some.

While these individual discussions with employees were undenied by DeLuca, I find nothing in them violative of the Act. Not even Barile or Carroll testified that DeLuca made any statements to them indicating that his discussions were any more than those permitted by management with employees when problems come to a manager's attention. There was no mention of the Union, or the organizational campaign, nor did Barile or Carroll testify that DeLuca promised to solve grievances or promised benefits. In short, I conclude that a manager has the right to discuss problems that have come to his attention with employees and that absent some factor which would make these conversations intimidating or otherwise interfere with employees' Section 7 rights, I conclude that such is not unlawful. Accordingly, I will recommend that paragraph 9 of the complaint be dismissed.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices found, occurring in connection with the Respondent's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that the Respondent unlawfully laid off John Barile and Kerry Carroll on November 3, 1979, I shall recommend that it cease and desist from such activity and offer them reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment and make them whole for any wages or other benefits they may have lost as a result of the discrimination against them in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 298 (1950), with interest as provided for in *Florida Steel Corporation*, 231 NLRB 651 (1977).[3]

Upon the foregoing findings of fact, conclusions of law, the entire record in this matter and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, Heartland Food Warehouse, Division of Purity Supreme Supermarkets, Vernon, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off or otherwise discriminating against employees because they engage in concerted activities protected by Section 7 of the Act or activity on behalf of the Union or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[5]

2. Take the following affirmative action:

(a) Offer reinstatement to John Barile and Kerry Carroll to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment and make them whole for any losses they may have suffered as a result of the discrimination against them in accordance with the provisions of the remedy section above.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Vernon, Connecticut, facility, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Officer-in-Charge for Subregion 39, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that copies of said notices are not altered, defaced, or covered by any other material.

(d) Notify the Officer-in-Charge for Subregion 39, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

3. The complaint in all respects not found herein is dismissed.

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[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[4] In the event no exceptions are filed as provided in Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[5] Although finding that the Respondent did in fact discriminate against two employees in violation of the Act, generally it does not appear from this record that the Respondent has a proclivity to engage in unfair labor practices. Accordingly, the narrow injunctive order is appropriate. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[6] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."